

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

DOCKET FILE COPY ORIGINAL



July 9, 1997

VIA FEDERAL EXPRESS

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. , Room 222
Washington, D.C. 20036

Re: DA No. 97-1211; RM 9101

Dear Mr. Caton:

Enclosed you will find an original and four copies of **COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON PETITION FOR EXPEDITED OPERATIONS SUPPORT SYSTEMS RULEMAKING.**

Also enclosed is one additional copy to be conformed and returned to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter. If you have any questions, please call me at (415) 703-1952

Sincerely,

A handwritten signature in cursive script that reads 'Mary Mack Adu'.

Mary Mack Adu
Attorney for the People of the
State of California and the Public
Utilities Commission of the State
of California

MMA:mbh

encl.

Rec'd of California
July 10, 1997

Handwritten initials, possibly 'JW' or 'PW', in dark ink.

ORIGINAL

DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

MAY 17 1997
FCC

In the Matter of)
)
Petition for Expedited Rulemaking)
to Establish Reporting Requirements)
and Performance and Technical Standards)
for Operations Support Systems.)
_____)

DA No. 97-1211
RM 9101

**COMMENTS OF THE PEOPLE OF THE STATE OF
CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA ON PETITION FOR EXPEDITED
OPERATIONS SUPPORT SYSTEMS RULEMAKING**

I. INTRODUCTION

The People of the State of California and the Public Utilities Commission of the State of California ("California" or "CPUC") hereby respectfully submit these comments in response to the Federal Communications Commission's ("Commission" or "FCC") public notice seeking comment on a petition for expedited rulemaking on Operations Support Systems (OSS) requirements in the FCC's *Local Competition First Report and Order*.¹ The petition was jointly filed by LCI International Telecom Corp. (LCI) and the Competitive Telecommunications Association (CompTel) on May 30, 1997. We believe that a

¹ The Order requires an incumbent local exchange carrier (LEC) to provide access to OSS functions under its obligation to offer access to unbundled network elements (UNE) under section 251(c) (3), and to provide nondiscriminatory access to all UNE's, as well as services made available for resale under sections 251(c)(e) and (c)(4). *Local Competition First Report and Order*, 11 FCC Rcd 15499, 15660, 15763.

rulemaking should be issued in order to garner interested parties' comments on OSS performance and technical standards. There is a need to put to rest the national debate on what these standards should be.

The CPUC agrees with the FCC that "access to OSS functions is critical to creating the opportunities for competition in the telephone exchange market that Congress envisioned" (Public Notice, page 1). In the public notice, the FCC encourages parties to provide specific suggestions for rules and information on performance standards and penalty provisions to which parties are subject as a result of negotiated or arbitrated agreements. Unfortunately, the CPUC is immersed in the process of defining and costing the UNEs that will provide access to OSS functions and will not be able to provide detailed proposals on either rules or standards until that work is done. These comments will be limited to addressing the current status of CPUC proceedings in this area.

As a preliminary matter, though, the CPUC would like to use these comments as a vehicle for encouraging a cooperative framework between state regulators, the FCC and interested parties in developing national standards and rules. The 1996 Telecommunications Act ("The Act") requires both state and federal regulators to bear the responsibility for overseeing the development of OSS functions. As the CPUC has argued in the past, broad national standards can be of great assistance to states, but requiring states to implement detailed rules and regulations can be very burdensome and unnecessary. On the other hand, the

CPUC recognizes that in many cases, including California's, Incumbent Local Exchange Carriers' (ILECs) existing OSS functions serve more than one state. These carriers would prefer to develop a single set of OSS functions and standards for competitors, regardless of the state from which the competitors access the ILECs' OSS functions. Therefore, a balanced approach is necessary to ensure that the FCC's rules result in standards that promote competition and allow all regulatory bodies to carry out their responsibilities.

II. SUMMARY OF CPUC PROCEEDINGS EXAMINING OSS FUNCTIONS

In California, MCI, AT&T and Sprint filed complaint cases alleging that Pacific Bell failed to process orders promptly and accurately when customers sought to change their local exchange service from Pacific Bell to a competitive provider.² The complainants charged that they have been prevented from competing effectively in the local exchange market. The complaint cases focus on perceived deficiencies in Pacific's current OSS system and ask the California Commission to order Pacific to devote the resources necessary to improve its internal OSS processes to eliminate current order backlogs and ensure against errors in processing. They ask that the competitive LECs (CLECs) be afforded the same level and quality of service as the ILEC provides to themselves, and

² MCI filed C.96-12-026 on December 11, 1996, AT&T filed C.96-12-044 on December 23, 1996, and New Telco.LP, d/b/a Sprint Telecommunications Venture filed C.97-02-021 on February 20, 1997. The complaint cases were consolidated, pursuant to Rule 55 of the CPUC's Rules of Practice and Procedure, because the cases involved related questions of law and fact.

complainants request damages as appropriate. Evidentiary hearings were held May 12-15, 1997, and the case has been submitted to the Administrative Law Judge (ALJ) who is in the process of drafting a decision for consideration by the California Commission.

In addition to the complaint case which deals exclusively with the OSS processes currently in place, the CPUC initiated a proceeding to define, and determine the cost of, long-term OSS functions, as required for an unbundled network element. This OSS proceeding is a joint proceeding in the CPUC's open Local Competition and Open Access and Network Architecture Development (OANAD) dockets.³ Commission staff facilitated a number of workshops over the past few months to define OSS elements and review the metrics necessary to determine what constitutes parity with retail OSS systems. The assigned ALJ ordered depositions on OSS functions to begin on July 28, 1997, and a ruling is pending on a further procedural schedule for the remainder of the proceeding.

III. THE ACT REQUIRES EFFECTIVE ACCESS TO OSS FUNCTIONS: THE FCC AND THE STATES SHARE THIS RESPONSIBILITY

A. Shared Responsibility

In crafting the Act, Congress assigned some responsibilities exclusively to the FCC, some exclusively to state utility commissions, and some responsibilities

³ Competition for Local Exchange Service, R.95-04-043/I.95-04-044; Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks, R.93-04-003/I.93-04-002.

were not exclusively assigned to either agency. We agree with the FCC's conclusion in paragraph 523 of the *Local Competition First Report and Order* that an incumbent LEC must provide nondiscriminatory access to their OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC. In the Act, access to OSS functions was not explicitly addressed and, therefore, not exclusively assigned to either the FCC or the state utility commissions. Rather, Congress simply mandated that competitors must have nondiscriminatory access to UNEs and resold services, realizing that without the ability to order elements and services in a timely and efficient manner, competitors would not be able to compete with ILECs. As a result, both groups of regulators bear the responsibility of ensuring that nondiscriminatory access to UNEs and resold services, as Congress envisioned, be accomplished through adequate access to OSS functions.

B. FCC's Responsibilities

The FCC derives its regulatory responsibility from Congress's broad mandate that the FCC shall pass any rules necessary to implement Section 251 of the Act. (*See* § 251 (d)(1).) In addition, the FCC must determine if ILECs requesting authority to provide in-region interLATA service have met the requirements of Section 271 of the Act which mandates, *inter alia*, that ILECs have furnished access on a nondiscriminatory basis to all UNEs and services made

available for resale under Sections 251(c)(3) and (c)(4) of the Act prior to their offering such service.

C. State Utility Commissions' Responsibilities

State utility commissions' regulatory responsibilities derive, in part, from the obligation of states to arbitrate differences between interconnecting parties when disputes arise during contract negotiations (Section 252 (b)(4)(C) of the Act). In some states, approved interconnection agreements have dispute resolution clauses that refer issues to state utility commissions for arbitration or resolution. Some states have the additional responsibility to settle disputes that arise under interconnection agreements. California has approved several voluntary agreements that provide for the CPUC to act as an arbitrator when parties either cannot agree on an interpretation of an interconnection agreement, or when parties fail to fulfill obligations of an interconnection agreement. Also, the California state legislature authorized the CPUC to take steps necessary to ensure that competition in telecommunications markets is fair. (Section 709.5(a), CAL PU Code.) In response to this legislative mandate, the CPUC issued regulations in February, 1996 that require ILECs to provide an automated on-line ordering system for use by competitors (Decision (D.) 96-02-072, p.32). The CPUC did not specify detailed standards, but did recognize that further work was required and initiated that process.

IV. MINIMUM NATIONAL STANDARDS ARE NECESSARY TO ENSURE NONDISCRIMINATORY ACCESS TO OSS FUNCTIONS

The CPUC believes that there is a need for national standards, however, as we noted in our comments in the Local Competition Proceeding, states must have the flexibility to implement state standards that accommodate company or regional provisioning systems. (California Opening Comments at p.27.) National standards will prevent potentially duplicative efforts by state utility commissions to develop their own standards and reduce the likelihood that ILECs will make inefficient investments to provide nondiscriminatory access to OSS functions. As stated earlier, the CPUC is aware that most ILECs' OSS functions are provided through centralized facilities that serve multiple states. When state commissions develop access requirements, there is a potential that states' regulations may conflict with each other, driving up the cost of access and creating unnecessary inefficiencies. Thus, a clear role for the FCC is to establish broad national standards that reduce the likelihood of states developing OSS regulations that conflict with the actions of other states. However, it is not necessary or desirable for the FCC to develop detailed national standards.

To develop detailed standards would require a considerable expenditure of resources by the FCC, and such standards would likely require some flexibility to accommodate differences that might exist among states. In addition, many of the states whose contribution would be critical to developing national standards are

also developing their own standards. With limited resources, these states would be forced to choose between participating in a federal rulemaking, delaying or continuing their own efforts, or choosing not to participate in the FCC's rulemaking process. It is difficult to argue that any of these results further expedite or improve access to OSS functions and the development of competition.

V. A COOPERATIVE APPROACH TO DEVELOPING STANDARDS FOR ACCESS TO OSS FUNCTIONS WILL RESULT IN THE MOST DESIRABLE RESULT

The CPUC favors a cooperative approach in which the FCC, through a rulemaking process, would develop broad national standards with the dual goals of promoting consistency in access to OSS functions across states that are served by the same ILEC, and providing a broad framework that allows states to develop more detailed OSS requirements. The FCC's standards should address both the systems to which competitors should have access, and the categories for performance standards. During the development of national standards, all parties could share the valuable experience that has been learned by the pioneering efforts of some states.

Subsequent or parallel to the FCC's consideration and issuance of national standards, individual state utility commissions would be able to design and implement more detailed requirements based on the FCC's broad standards. The rules developed by states should be both consistent with the national standards, and tailored to accommodate existing state regulations that have shaped the

ILECs' current OSS functions. As states develop rules and performance criteria, these regulations could be included in future interconnection agreements. In some states, such as California, the state utility commission has retained the regulatory authority to modify interconnection agreements so that they are in accord with future rulings that affect terms and conditions of the contract. Therefore, the OSS rules adopted by these states could be incorporated into current interconnection agreements.

VI. CONCLUSION

Access to OSS functions is critical to the development of competition as Congress envisioned in the Act. The CPUC supports a cooperative approach to developing standards for access to OSS functions. Under this approach, the FCC should issue a Noticed of Proposed Rulemaking to develop broad national

///

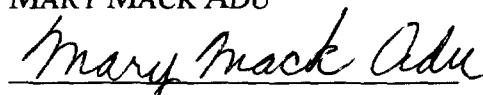
///

///

standards for access to OSS functions. State utility commissions will use these standards to develop specific requirements for access to OSS functions.

Respectfully submitted,

PETER ARTH, JR.
LIONEL B. WILSON
MARY MACK ADU


Mary Mack Adu

505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1952
Fax: (415) 703-4432

Dated: July 9, 1997

Attorneys for the Public Utilities
Commission of the State of California

CERTIFICATE OF SERVICE

I, Mary Mack Adu, hereby certify that on this 9th day of July 1997, a true and correct copy of the foregoing in **COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON PETITION FOR EXPEDITED OPERATIONS SUPPORT SYSTEMS RULEMAKING**, was mailed first class, postage prepaid to all known parties of record.


Mary Mack Adu